

RECORDING REQUESTED BY:

CHICAGO TITLE CO.

Attention: Mr. Lee R. Redmond III
 Kaiser Ventures Inc.
 3633 E. Inland Empire Blvd., Suite 850
 Ontario, California 91764

Recorded in Official Records, County of
 San Bernardino, Errol J. Mackzum, Recorder

Doc No. 19950393082
3:00pm 11/14/95

WHEN RECORDED MAIL TO:

Attention: Mr. Peter A. Garcia
 California Environmental Protection Agency
 Department of Toxic Substances Control
 245 West Broadway, Suite 350
 Long Beach, California, 90802

Chicago Title # 607

PG	FEE	APF	GIMS	PH CPY	CRT CPY	ADD NM	PEN PR	PCOR	
50	7	147							
			5				607	T	
NON ST	LN	SVY	CIT-CO	TRANS TAX	NO FEE	CHRG	EXAM		S USE

COVENANT TO RESTRICT USE OF PROPERTY

(Re: a Portion of the Kaiser Ventures Inc. (Formerly Known as Kaiser Resources Inc.)
 Mill Site, Operable Unit No. 2, Former By-Products Plant Area)

This Covenant and Agreement ("Covenant") has an effective date of September 20, 1995, by and between Kaiser Ventures Inc., formerly known as Kaiser Resources Inc., and its successors and assigns (the "Covenantor"), the current owner of the subject property to be restricted herein, and the California Environmental Protection Agency, Department of Toxic Substances Control (the "Department"), the government agency with statutory oversight responsibility with respect to hazardous substances response actions at the subject property. The Covenantor and Department may be collectively referred to herein as the "Parties." This Covenant is made with reference to the following facts:

- A. The Capped Property (as defined below) is a limited portion of the site of the former World War II era Kaiser Steel Mill (13425 San Bernardino Avenue, Fontana), located in the area now generally bounded by Etiwanda Avenue on the west, Whittram Avenue on the north, Cherry Avenue on the east, and Valley Blvd. on the south, County of San Bernardino, State of California (the "Site"). The area to be restricted herein ("Capped Property"), more particularly described and depicted in Exhibit "A" (San Bernardino County, Parcel #6 of Parcel Map No. 14723) attached hereto and incorporated herein by this reference, where operations were located that recovered and temporarily stored various valuable by-products recovered from the coke oven gas stream.
- B. On August 22, 1988, the Department's predecessor in interest (California Department of Health Services) issued to Covenantor's predecessor in interest (Kaiser Steel Corporation) a Consent Order pursuant to California Health and Safety Code ("H&S Code") §§ 205, 25355.1(a)(1)(B), and 25355.5(a)(1)(C). The purpose of this Consent Order was "to ensure that any release or threatened release of a hazardous substance or hazardous waste to the air, soil, surface water and ground water at or from the Facility [i.e., the Site] is thoroughly investigated and that appropriate remedial actions are taken." In furtherance of the Consent Order, and pursuant to the Department's applicable statutory authority referenced therein and elsewhere, the Department is requiring this Covenant as part of the remedial actions at the Site.
- C. As of 1995, land within a two (2) mile radius of the Capped Property supports a mixture of primarily industrial and low-density residential uses. There is also a considerable amount of vacant, currently unproductive agricultural land for which industrial development is planned. The nearest residences to the Site are located approximately 2,000 feet to the north of the border of the Site and 2,000 feet to the east of the border of the Site. The nearest sensitive population to the Site is an elementary school located 3,400 feet to the southeast of the border of the Site.
- D. All or a portion of the Capped Property contains hazardous substances ("Hazardous Substances") which include or may include one or more of the following contaminants of concern (as reported in the March 1995, Remedial Action Plan, Operable Unit No. 2 ("RAP"), which became effective upon the Department's approval on May 1, 1995): acenaphthene, anthracene, antimony, arsenic, barium, benz(a)anthracene, benzene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, beryllium, cadmium, chrysene, chromium (including hexavalent), copper, cyanide, dibenz(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, lead, manganese, mercury, molybdenum, naphthalene, nickel, phenol, pyrene, selenium, silver, styrene, tetrachloroethylene, thallium, toluene, vanadium, xylene, and zinc. The Department considers the concentrations of certain polynuclear aromatics (e.g., benzo(a)pyrene) and certain trace metals to be above acceptable health risk-based levels.

- E. Covenantor, in compliance with applicable law, and under the supervision and authority of the Department, is undertaking a response action ("Response Action") at several areas of the Site pursuant to the RAP, which response action Covenantor asserts is in compliance with applicable requirements of the National Contingency Plan (40 C.F.R. § 300, *et. seq.*). The Response Action includes installing and maintaining, pursuant to the RAP, a synthetic membrane cover ("Cap") over the Capped Property. The Cap consists of a low permeability synthetic membrane and other associated layers over the Hazardous Substances, as more particularly described in the engineering drawing attached as Exhibit "B" hereto. The Response Action also includes the installation and operation of: (1) a passive gas collection system ("GCS") on the Capped Property which removes miscellaneous gas/vapors migrating upward from under the Cap, (2) a vapor extraction system ("VES"), on a limited portion of the Capped Property where there were formerly located underground storage tanks, more particularly described and depicted in Exhibit "C" hereto, which remediates certain volatile organic compound-impacted soils, and (3) groundwater monitoring wells ("Monitoring Wells"), which are not on the Capped Property. The operation and maintenance ("O&M") of the Cap, GCS, VES, and Monitoring Wells is pursuant to an O&M Manual incorporated into the O&M Agreement between Covenantor and the Department dated September 20, 1995.
- F. This Covenant does not nullify or otherwise modify any releases from liability granted by the Department pursuant to H&S Code §§ 25364 and 25364.1 (California AB 2589, as amended by AB 3201) or other law of similar import.
- G. The Department has approved this Response Action as being sufficiently protective of human health and the environment.

ARTICLE I
PARAMETERS OF COVENANT

1. Restrictions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Capped Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every of the Restrictions: (a) shall run with the land pursuant to H&S Code § 25355.5, (b) shall inure to the benefit of and pass with each and every portion of the Capped Property, (c) shall apply to and bind the respective successors in interest to the Capped Property, (d) are for the benefit of, and shall be enforceable by, the Department, (e) are imposed upon the entire Capped Property unless expressly stated as applicable only to a specific portion thereof, and (f) are imposed pursuant to H&S Code §§ 25355.5 and 25356.1.
2. Concurrence of Owners/Occupants. Each and every owner ("Owner" shall mean the Covenantor or its successors in interest, including heirs and assigns, who hold title to all or any portion of the Capped Property) and occupants ("Occupants" shall mean lessees or other possessors of any portion of the Capped Property whose occupancy has a significant likelihood of disturbing or impairing the Cap and/or any other possessors of any portion of the Capped Property who hold such interest(s) for more than three (3) consecutive months) shall be deemed to be in accord with this Covenant and shall further be deemed to unconditionally agree, for and among themselves, their heirs, successors, and assignees (and for any agents thereof), to the Restrictions as herein established (such that their interest(s) and/or possessory rights in the Capped Property are taken subject to such Restrictions).

ARTICLE II
RESTRICTIONS

3. Incorporation into Deeds and Leases. Covenantor agrees that the Restrictions set forth herein shall be incorporated by reference in each and all deeds, and leases to Occupants, for any portion of the Capped Property.
4. Restrictions on Use. Covenantor agrees to restrict the use of the Capped Property in accordance with the restrictions set forth herein in order to protect the present and future public health and safety from potential harm to persons which may result from hazardous substances which exist on the Capped Property. The Restrictions provided herein shall apply only to the Capped Property. Covenantor agrees not to use the Capped Property for any of the following purposes:
- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as permanently-occupied residential human habitation.
 - (b) A long-term care hospital for humans. Nothing herein shall restrict use of the Capped Property for any infirmary, medical aid station, or emergency medical care facility where there is no intent for any patient to remain in such facility for more than 24 hours (e.g., as may be associated with the motor sport complex).
 - (c) A traditional public or private school for persons under 21 years of age. Nothing herein shall restrict use of the Capped Property for any specialized training programs related to then-existing facilities on the Capped Property (e.g., a driving "school" related to the motor sport complex).
 - (d) A day care center for children.
5. Non-Interference with Cap and VES. Covenantor agrees:

- (a) No activities which will disturb the Cap and/or the VES (e.g., excavation, grading, removal, trenching, filling, earth movement, or mining) shall be permitted on the Capped Property without prior review and approval by the Department.
- (b) All uses and development of the Capped Property shall preserve the integrity of the Cap and operation of the VES.
- (c) Any proposed alteration of the Cap and/or the VES shall require written approval by the Department, except for the addition of non-invasive surface materials ("Non-Invasive Surface Materials" means any materials, including soil, asphalt, concrete, and structures, placed upon or over the Cap which does not disturb the Cap or the VES, or impair the integrity or operation of either).
- (d) Covenantor shall notify the Department of each of the following: (i) The type, cause, location and date of any disturbance to the Cap and/or VES which could affect the ability of the Cap to contain subsurface Hazardous Substances in the Capped Property and/or the VES to operate properly, and (ii) the type and date of repair of such disturbance. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance(s) and the completion of any repairs.

6. Notice in Agreements. Covenantor agrees that the Owner shall furnish in writing to Occupants and/or to the Owner's successor in interest to any part of the Capped Property, as either part of another written agreement (e.g., a lease), or as a stand alone instrument, the following statement:

"All or a portion of the land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists and does not address the liability of any party."

7. Conveyance of Capped Property. Covenantor agrees that the Owner shall provide notice to the Department not later than thirty (30) days prior to any conveyance of any ownership interest in the Capped Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disprove, or otherwise affect such proposed conveyance, except as otherwise provided by law, by administrative order, or by reason of this Covenant.

8. Access for Implementing O&M. Covenantor agrees that all Owners and Occupants shall forever grant reasonable right of entry and access, to the entity or person responsible for implementing the O&M Agreement or any portion thereof, for the purpose of implementing such O&M Agreement.

ARTICLE III ENFORCEMENT

9. Enforcement. Failure of the Covenantor and/or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require that the Covenantor and/or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon any portion of the Capped Property) constructed in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil and/or criminal actions against the Covenantor and/or Owner as provided by law.

ARTICLE IV VARIANCE, TERMINATION, AND TERM

10. Variance. Covenantor, any Owner or, with the Owner's written consent, any Occupant of the Capped Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&S Code § 25233.

11. Termination. Covenantor, any Owner or, with the Owner's written consent, any Occupant of the Capped Property or any portion thereof may apply to the Department for a termination of the Restrictions or other term of this Covenant as they apply to all or any portion of the Capped Property. Such application shall be made in accordance with H&S Code § 25234.

12. Term. Unless ended in accordance with the "termination" paragraph above, by law, or by other valid method, this Covenant shall continue in effect in perpetuity.

ARTICLE V MISCELLANEOUS

13. No Dedication Intended. Nothing set forth in this Covenant shall be constructed to be a gift or dedication, or offer of a gift or dedication, of the Site, Capped Property, or any portion thereof to the general public or anyone else for any purpose whatsoever. In addition, nothing in this Covenant shall be deemed to constitute a covenant, encumbrance, or restriction on the use of any property other than the Capped Property.

14. Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the Parties and are not a part of the Covenant.

15. Code References. All references to Code sections include successor provisions, if any.
16. Department References. All references to the Department include successor agencies/departments or other successor entity.
17. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Bernardino within ten (10) days of the Covenantor's receipt of a fully executed original.
18. Notices. Whenever any person gives or serves any notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid certified, return receipt requested:

To Covenantor: Kaiser Ventures Inc.
3633 E. Inland Empire Boulevard, Suite 850
Ontario, California 91764
Attention: Lee R. Redmond III

To Department: Department of Toxic Substances Control
Region 4, Site Mitigation Cleanup Operations
245 West Broadway, Suite 350
Long Beach, California 90802
Attention: Peter A. Garcia

Any party may change its address or the individual to whose attention a notice is to be sent by giving such written notice in compliance with the provisions of this section.

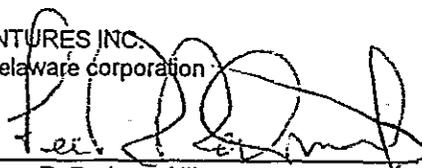
19. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

"COVENANTOR"

Date: 9.26, 1995

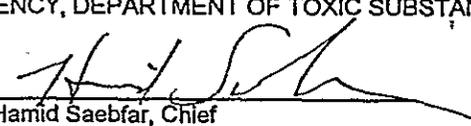
KAISER VENTURES INC.
a Delaware corporation

By: 
Lee R. Redmond III
V.P. Real Estate

"DEPARTMENT"

Date: 9/26, 1995

CALIFORNIA ENVIRONMENTAL PROTECTION
AGENCY, DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: 
Hamid Saebfar, Chief
Site Mitigation Cleanup Operations
Southern California Branch

STATE OF California)
COUNTY OF San Bernardino }

On September 26, 1995 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Lee R. Redmond, III, Vice President of Real Estate for Kaiser Ventures, Inc., personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



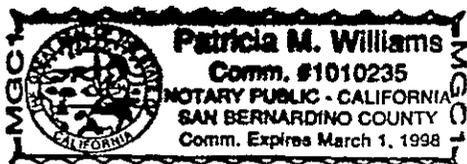
Patricia M. Williams

Notary Public

STATE OF California)
COUNTY OF San Bernardino)

On September 26, 1995 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Hamid Saebfar, Chief of Site Mitigation Cleanup Operations, Southern California Branch of the California Environmental Protection Agency, Department of Toxic Substances Control, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Patricia M. Williams
Notary Public